

21 C.J.S. Courts § 331

Corpus Juris Secundum | May 2023 Update

Courts

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X. Clerks of Courts

B. Compensation

§ 331. Fees and commissions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  13 to 29, 32

Under some statutes, the compensation of a clerk of court depends upon fees received for particular services or commissions on funds handled by the clerk.

Under some statutes, the compensation of a clerk of court depends upon fees received for particular services¹ or commissions on funds handled by the clerk.² The court has considerable discretion in setting a commission under a statute allowing the clerk to receive a commission on all money coming into his or her hands.³

Under statutes so providing, a clerk of a court is entitled to fees for particular services such as docketing; filing papers; issuing summons and subpoenas;⁴ entering judgments, decrees, or orders;⁵ making records;⁶ searching records;⁷ and furnishing copies of records and papers.⁸ With respect to foreclosure sales, a clerk of court "earns" statutory sales and registry fees when services are rendered and, thus, the fact that the sale is later invalidated through no blunder of the clerk is of no consequence in determining whether the clerk may collect his or her administrative costs.⁹

For services which the clerk is not required by law to perform, the clerk is not entitled to compensation.¹⁰ For services rendered for joint parties or in consolidated causes, the clerk is entitled ordinarily to but one fee;¹¹ the court's authority to assess multiple filing fees for multiple plaintiffs does not authorize or require the court clerk to reject an otherwise valid complaint where such additional filing fees are not initially tendered.¹²

Prepayment.

Ordinarily, a clerk of a court is entitled to demand the prepayment of his or her fees before the performance of the services requested of him or her¹³ and may refuse to act until the proper fee is paid.¹⁴ However, when a statute or rule requiring the payment of filing fees in advance is merely directory or discretionary, the payment of the fee is not a condition precedent to the proper filing of a paper or the commencement of a lawsuit.¹⁵ A court clerk may be required to refund fees that are excessive or beyond a statutorily established amount.¹⁶

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Footnotes

- 1 U.S.—*Larabee Flour Mills Co. v. Nee*, 81 F.2d 623 (C.C.A. 8th Cir. 1936).
S.D.—*Minnehaha County v. Foster*, 61 S.D. 406, 249 N.W. 688 (1933).
- 2 Fla.—*Taylor v. Tampa Elec. Co.*, 356 So. 2d 260 (Fla. 1978).
Miss.—*Mississippi State Highway Com'n v. Herban*, 522 So. 2d 210 (Miss. 1988).
- 3 Miss.—*Mississippi State Highway Com'n v. Herban*, 522 So. 2d 210 (Miss. 1988).
- 4 Miss.—*Mississippi State Highway Com'n v. Herban*, 522 So. 2d 210 (Miss. 1988).
- 5 N.Y.—*In re Friedman*, 149 Misc. 278, 267 N.Y.S. 56 (N.Y. City Ct. 1933).
Tex.—*McCormick v. Sheppard*, 126 Tex. 25, 86 S.W.2d 213 (Comm'n App. 1935).
- 6 Ala.—*Swindle v. Crocker*, 217 Ala. 199, 115 So. 252 (1928).
Fla.—*State ex rel. Atlantic Peninsular Holding Co. v. Butler*, 121 Fla. 417, 164 So. 128 (1935).
- 7 Fla.—*State ex rel. Atlantic Peninsular Holding Co. v. Butler*, 121 Fla. 417, 164 So. 128 (1935).
- 8 Ala.—*Opinion of the Clerk*, 377 So. 2d 1081 (Ala. 1980).
Kan.—*State v. Richardson*, 129 Kan. 806, 284 P. 367 (1930).
- 9 Fla.—*Wilken v. North County Co., Inc.*, 670 So. 2d 181 (Fla. 4th DCA 1996).
- 10 U.S.—*U.S. v. Van Duzee*, 185 U.S. 278, 22 S. Ct. 648, 46 L. Ed. 909 (1902).
- 11 Ala.—*Bailey v. Borden, Inc.*, 750 So. 2d 289 (La. Ct. App. 4th Cir. 1999).
Miss.—*Hinds County Bd. of Sup'rs v. Abnie*, 934 So. 2d 996 (Miss. 2006).
N.Y.—*Warren v. Cedar Hill Cemetery Ass'n*, 277 A.D.2d 371, 717 N.Y.S.2d 213 (2d Dep't 2000).
Severed claims
Where certain claims are severed and pursued separately, a court clerk may require a filing fee for each severed claim that will proceed as a separate action.
U.S.—*Third Degree Films v. Does 1-47*, 286 F.R.D. 188, 83 Fed. R. Serv. 3d 1136 (D. Mass. 2012).
- 12 W. Va.—*Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998).

- 13 U.S.—Willis v. Shaw, 186 F.R.D. 358 (E.D. Tex. 1999).
- Conn.—Farren v. Farren, 142 Conn. App. 145, 64 A.3d 352 (2013).
- Idaho—Massey v. Stillman, 128 Idaho 736, 918 P.2d 605 (Ct. App. 1996).
- La.—Jacobs v. Coca Cola Bottling Co., 859 So. 2d 250 (La. Ct. App. 2d Cir. 2003), writ denied, 865 So. 2d 725 (La. 2004).
- Prepayment not required in certain cases.**
Some states do not require prepayment of fees for certain proceedings, such as habeas corpus.
- Neb.—Jones v. Nebraska Department of Correctional Services, 21 Neb. App. 206, 838 N.W.2d 51 (2013).
- 14 U.S.—Willis v. Shaw, 186 F.R.D. 358 (E.D. Tex. 1999).
- La.—Jacobs v. Coca Cola Bottling Co., 859 So. 2d 250 (La. Ct. App. 2d Cir. 2003), writ denied, 865 So. 2d 725 (La. 2004).
- 15 U.S.—Casanova v. Dubois, 304 F.3d 75 (1st Cir. 2002).
- Idaho—Massey v. Stillman, 128 Idaho 736, 918 P.2d 605 (Ct. App. 1996).
- 16 Miss.—Hinds County Bd. of Sup'rs v. Abnie, 934 So. 2d 996 (Miss. 2006).